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10/594,184

05/04/2007

Janice Ryan

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EXAMINER

WILLIAMS, MONICA L

ART UNIT

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12/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---------------------------------------|------------------------------------|--|
| Office Action Summary | Application No. 10/594,184 | Applicant(s) RYAN ET AL. | |
| | Examiner MONICA L. WILLIAMS | Art Unit 3644 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 6,8-11,13,14,18,19 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,12 and 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins (2,300,776) in view of Rhodes (1,408,308) and Wade (2,497,381).

3.

4. In re claim 1, with reference to page 2 col.1 lines 49-54 and col.2 lines 4-8, Collins discloses an electrically heated plant propagator comprising or including a transparent cover (10) characterized in that the cover has an electrically conductive heating element (20) being connectable to an electric power supply by which the heating element heats the inside of the plant propagator when the cover is closed. Not disclosed are multiple heating elements spread about the cover and the heating element specifically being a resistive heater.

5. With reference to Figure 1 and col.2 lines 56-69, Rhodes discloses an incubator including a cover, wherein the cover has electrically conductive heating elements on the inner surface of the cover and spread about the cover, the heating elements being connectable to an electric power supply by which the heating elements, through resistive heating, heat the inside of the incubator when the cover is closed. The advantage of this is to heat the entire housing. Thus it would have been obvious to one

having ordinary skill in the art at the time the invention was made to have modified the heating element of Collins to include multiple heating elements spread about the cover and the heating element specifically being a resistive heater as taught by Rhodes in order to heat the entire housing. Not disclosed is the incubator of Rhodes being used as a plant propagator.

6. However, with reference to col.1 lines 1-8, Wade discloses that it is well known to use the same housing as a plant propagator, an incubator, or a brooder since they all serve the general purpose of sheltering a living object and keeping it warm.

7. In re claim 2, with reference to Figure 1, Collins discloses a soil tray (11) over which the transparent cover may be placed.

8. In re claim 3, with reference to Figure 1, Collins discloses a spacer collar (18) between the cover and the upper rim of the tray.

9. In re claim 4, with reference to page 2 col.1 lines 49-54, Collins discloses the spacer collar is transparent.

10. In re claims 5 and 7, Collins discloses the claimed invention except for the spacer collar being integral with the cover and the spacer collar being integral with the tray. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the spacer collar being integral with the cover and the spacer collar being integral with the tray, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

11. In re claim 12, with reference to page 2 col.2 lines 38-40, Collins et al discloses using a thermostat to ensure that the proper temperature is maintained.

12. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins (2,300,776) in view of Rhodes (1,408,308) and Wade (2,497,381) as applied to claims 1-5, 7, and 12-13 above, and further in view of Yoneda et al (6,725,598).

13. In re claim 15, Collins, as modified by Rhodes and Wade, discloses the claimed invention except for a sensor for sensing condensation.

14. However, with reference to col.3 lines 10-17, Yoneda et al discloses a propagator with a sensor to sense conditions in which condensation may be induced. The advantage of this is to be able to regulate an optimal climate for the plants. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the propagator of Collins, as modified by Rhodes and Wade, with a sensor as taught by Yoneda et al in order to be able to regulate an optimal climate for the plants.

15. In re claim 16, Collins, as modified by Rhodes and Wade, discloses the claimed invention except for a logic circuit.

16. However, with reference to col.10 lines 7-24, Yoneda et al disclose a propagator with a logic circuit (11) that automatically switches the heating elements on in order to inhibit the build up of condensation. The advantage of this is to be able to regulate an optimal climate for the plants. Thus it would have been obvious to one having ordinary

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skill in the art at the time the invention was made to have modified the propagator of Collins, as modified by Rhodes and Wade, with a sensor as taught by Yoneda et al in order to be able to regulate an optimal climate for the plants.

17. In re claim 17, Collins, as modified by Rhodes and Wade, discloses the claimed invention except for a temperature sensor.

18. However, with reference to col.2 lines 60-67, Yoneda et al disclose a propagator with a sensor that senses when conditions have changed such that heat may be turned off when an appropriate rise in ambient temperature has been noted. The advantage of this is to be able to regulate an optimal climate for the plants. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the propagator of Collins, as modified by Rhodes and Wade, with a sensor as taught by Yoneda et al in order to be able to regulate an optimal climate for the plants.

Response to Arguments

19. Applicant's arguments with respect to claims 1-5, 7, and 12-13 have been considered but are moot in view of the new ground(s) of rejection.

20. In response to the applicant's arguments regarding the objection to the drawings, the spacer collar having heating elements is shown in Figure 3, however, the spacer collar having heating elements is not shown in Figures 1 or 2 which disclose the elected species. Therefore the Examiner believes that this is a feature of Species II and not of Species I, unless the applicant can otherwise find support in the specification, And therefore claim 13 is withdrawn for being drawn to a nonelected Species II.

21. Applicant's arguments filed 08/15/2008 have been fully considered but they are not persuasive.

22. In response to applicant's argument that adding the sensors of Yoneda to the Collins arrangement would do nothing productive because Collins is already capable of maintaining the humidity, this argument is not persuasive. Collins discloses a venting means consisting of a thin piece of pyralin which curls up in response to humidity. Adding a sensor would provide a much more accurate and modern approach to the venting system, and therefore would provide for an obvious productive improvement.

Conclusion

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONICA L. WILLIAMS whose telephone number is (571)270-3113. The examiner can normally be reached on Mon to Fri 6:00-3:30, Alternate Friday off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael R Mansen/
Supervisory Patent Examiner, Art Unit 3644

MW 12/02/2008